No. ~~2135~~
2530

In the United States Circuit Court of Appeals for the Ninth Circuit.

CHAS. B. BLESSING, as Trustee of the Estate of PACIFIC MOTOR CAR COMPANY, a corporation, Bankrupt,

Petitioner.

vs.

G. A. BLANCHARD and W. H. WINN,

Respondents.

BRIEF FOR PETITIONER.

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CHAS. B. BLESSING, as Trustee of the Estate of PACIFIC MOTOR CAR COMPANY, a corporation, Bankrupt,

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vs.

G. A. BLANCHARD and W. H. WINN,

Respondents.

Brief for Petitioner.

Statement of the Case

The bankrupt was engaged in the buying, selling and repairing of automobiles at San Francisco.

G. A. Blanchard filed with the referee in bankruptcy a labor claim against the bankrupt's estate for $145.20, asserting his right to priority of payment of the same under the provisions of the bankruptcy act. In his claim he set forth that he was employed by the bankrupt corporation as its general manager at an agreed salary of $300.00 per month,

and that the sum of $145.20 represents the balance due him upon his salary earned within three months of the filing of the bankruptcy petition. The trustee in bankruptcy contested his right to priority of payment, but, after a hearing, the referee allowed the claim as entitled to priority of payment under Section 64 b (4) of the Bankruptcy Act for $145.20. (Trans. p. 3.)

W. H. Winn filed with the referee a labor claim against the bankrupt's estate for $320.00, asserting his right to priority of payment of same under the provisions of the bankruptcy act. In his claim he set forth that he was employed by the bankrupt as superintendent of its service department at an agreed salary of $150.00 per month, and that the sum of $320.00 represents the balance due him upon such salary for the months of March, April and May, 1914. The trustee contested his right to priority of payment, but, after a hearing, the referee allowed the claim as entitled to priority of payment under Section 64 b (4) of the Bankruptcy Act for $245.00, the same being the amount due for services performed within three months of the filing of the bankruptcy petition. (Trans. p. 4.)

Section 64 b (4) of the Bankruptcy Act provides as follows:

> "The debts to have priority . . . and to be paid in full out of bankrupt estates, and the order of payment shall be . . . wages due to workmen, clerks, traveling or city salesmen, or

> servants, which have been earned within three months before the date of the commencement of proceedings, not to exceed $300.00 to each claimant."

The trustee filed with the referee his petitions for a review by the District Court of these orders, and the referee prepared and filed in the District Court his certificate on review, combining both orders in one certificate. In this certificate he sets forth the facts adduced at the hearings, and stated in detail his reasons for deciding as he did, acknowledging, however, that as to Blanchard's claim:

> "He is not, in my opinion, a workman or clerk, and as to whether he is a servant within the meaning of the section, I have grave doubt." (Trans. p. 8.)

and further:

> "I have granted priority to his claim, but as stated, not without grave doubt as to whether the facts shown bring him within the meaning of the section."

The certificate of the referee sets forth the facts adduced at the hearings before him as follows:

> "The claim of G. A. Blanchard recited that the claimant was employed by said bankrupt as general manager at an agreed compensation or wages or salary of $300 per month. The claim

of W. H. Winn recites that the claimant was employed by said bankrupt 'as superintendent of the shop . . . working in and about the shop in the repair of automobiles and in the service department of said bankrupt, and that his salary was $150 a month'.

The testimony shows that Winn had authority to hire and discharge men in his department, but was subject to the control and direction of Blanchard as general manager; that he performed labor about the shop in like manner as the men working under him, in the repair of automobiles and general shop work. Blanchard as general manager, had power to hire and discharge men, and to superintend the salesmen, himself working in the capacity of a salesman. He also had the general control and direction of the workmen in the employ of the bankrupt in all its departments. He was not an officer, director or stockholder of the bankrupt, and received no compensation for his services other than a salary of $300 a month." (Trans. p. 7.)

A hearing was had before the District Judge, and he made one order affirming the orders of the referee. At this hearing, Blanchard and Winn asserted that even though they were not entitled to priority of payment under Section 64 b (4) of the Bankruptcy Act, they were entitled to such priority under Section 64 b (5) of that act taken in con-

junction with Section 1204 of the Civil Code of California, which last named section gives priority to workmen, clerks and servants.

The matter is now before the Circuit Court of Appeals upon the trustee's petition for a revision of the District Court's order.

Specification of Errors Relied Upon

1. The referee and the District Judge erred in allowing the claim of G. A. Blanchard as entitled to priority of payment under Section 64 b (4) of the Bankruptcy Act, for the reasons: (1) Section 1, Subd. 27, of the Bankruptcy Act limits the benefits of Section 64 b (4) to those whose salary does not exceed $1500 per year, and Blanchard's salary was $3600 per year; (2) Blanchard was not a workman, clerk, traveling or city salesman, or servant, within the meaning of Section 64 b (4).

2. The referee and the District Judge erred in allowing the claim of W. H. Winn as priority under Section 64 b (4) of the Bankruptcy Act, for the reasons: (1) Section 1, Subd. 27, of the Bankruptcy Act limits the benefits of Section 64 b (4) to those whose salary does not exceed $1500 per year, and Winn's salary was $1800 per year; (2) Winn was not a workman, clerk, traveling or city salesman, or servant, within the meaning of Section 64b (4).

Brief of the Argument

I.

Blanchard and Winn are excluded from Section 64 b (4) of the Bankruptcy Act because their compensation exceeded $1500 per year.

Bankruptcy Act, Section 64 b (4);
Bankruptcy Act, Section 1, Subd. 27;
In Re Rose, 1 Am. B. R. 68;
In Re August Becker & Co., 31 Am. B. R. 596.

II.

Neither the general manager of a corporation, such as Blanchard, nor the superintendent of its service department, such as Winn, is entitled to priority.

In Re Crown Point Brush Co., 29 Am. B. R. 638, 200 Fed. Rep. 882;
In Re Albert O. Brown & Co., 22 Am. B. R. 496, 171 Fed. 281;
In Re Greenberger, 30 Am. B. R. 117, 203 Fed. Rep. 583.

III.

Neither Blanchard nor Winn was a "servant" within the meaning of Section 64 b (4).

In Re Albert O. Brown, 22 Am. B. R. 496, 171 Fed. 281;
In Re Zotti, 23 Am. B. R. 607;

In Re Smith, 11 Am. B. R. 646;

In Re Grubbs-Wiley Grocery Co., 2 Am. B. R. 442, 96 Fed. Rep. 183;

In Re Carolina Cooperage Co., 3 Am. B. R. 154, 96 Fed. Rep. 950.

IV.

Neither Blanchard nor Winn became a "workman," "clerk," "salesman" or "servant" because he also performed duties similar to those performed by his subordinates.

In Re Crown Point Brush Co., 29 Am. B. R. 638, 200 Fed. Rep. 882;

In Re Greenberger, 30 Am. B. R. 117, 203 Fed. Rep. 583.

V.

It is immaterial that neither Blanchard nor Winn was a stockholder or director of the bankrupt corporation.

In Re Crown Point Brush Co., 29 Am. B. R. 638, 200 Fed. Rep. 882.

VI.

The laws of the State of California giving priority to wages due workmen, clerks, servants, salesmen and "other persons" cannot avail Blanchard or Winn.

Code of Civil Procedure of the State of California, Section 1204;

Bankruptcy Act, Section 64 b (5);

In Re Riehl, 29 Am. B. R. 613, 200 Fed. Rep. 455;

In Re Jacob Slomka, 9 Am. B. R. 635, 122 Fed. Rep. 630;

In Re Rouse, Hazard & Co., 1 Am. B. R. 234, 91 Fed. 96.

Argument

I.

Blanchard and Winn are excluded from Section 64 b (4) of the Bankruptcy Act because their compensation exceeded $1500 per year.

It has been held that Section 64 b (4) of the Bankruptcy Act is limited by the provisions of Section 1, Subd. 27, of the same Act, which latter section provides as follows:

> "Wage-earner. Wage-earner shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year."

In other words, the claimant to priority must receive a compensation not exceeding $1500 per year in order to come within Section 64 b (4).

In the case in re Rose, I Am. B. R. 68, where these two sections of the Bankruptcy Act were discussed, the court said, at page 73:

"It is a well-recognized rule of the courts, when called upon to construe a statute (Sec. 64 b (4), that the legislative intent should be ascertained, and in seeking for that intent we should give to the language of the statute its ordinary signification. Interpreting this act consistently with the intent of Congress as fairly implied from the language used, did De Witt, by virtue of his contract with Rose, stand towards Rose in the relation of workman, clerk, or servant? I am of the opinion he did not; when Congress incorporated these words into the act, the framers of the act had in mind 'wage-earners', a distinct class of persons, and they undertake to point out the class of persons they intended to protect; they are named in the act 'wage-earners.' Sec. 1, paragraph 27, declares that wage-earners shall mean an individual who works for wages, salary, or hire, at a compensation not exceeding one thousand five hundred dollars a year. In the act itself we find Congress fastening a limitation upon workmen, clerks, or servants. Only workmen, clerks, or servants, whose yearly compensation does not exceed one thousand five hundred dollars per year, fall within its protection, and further limiting the amount which shall be given priority, to a sum earned during the three months prior to the date of filing a petition in bankruptcy; thus showing it was manifestly the intent of Congress to permit priorities in favor

of employees wholly dependent upon their wages, salary, or hire for subsistence, exclusive of any aid from capital, and whose probable necessities arising from the nature of their employment justly entitled them to protection."

See also the case of in re August Becker & Co., 31 Am. B. R. page 596, where the court said:

"The claim for priority is made under Section 64 b (4) of the Bankruptcy Act, which reads as follows: . . . . . .

"The claimant would have been entitled to a priority under this section to the extent of $175.00, if it were not for the provisions of Section 1, Subd. 27, which reads as follows: . . .

"The first section of the Bankruptcy Act very clearly defines a 'wage-earner' as an individual who works for wages, salary or hire at a rate of compensation not exceeding $1500, and the subdivision of Section 64 relied upon by the claimant, instead of extending the scope of the subdivision of Section 1, limits it by providing that the wages due to workmen, clerks and servants which have been earned within three months may be allowed as a priority 'not to exceed three hundred dollars to each claimant.' "

II.

Neither the general manager of a corporation, such as Blanchard, nor the superintendent of its service department, such as Winn, is entitled to priority.

In the case of in re Crown Point Brush Co. 29 Am. B. R. 638, 200 Fed. Rep. page 882, the court, at page 639 of 29 Am. B. R., and page 883 of 200 Fed. Rep. said:

> "The duties of a 'general manager' . . . are to manage, control, direct, guide the business; see that it is carried on pursuant to the policy or directions of the board of directors . . . Wages due the general manager of a business or a corporation are not entitled to priority of payment . . . In a sense all employees of a corporation from president down, are 'workmen' or 'servants.' They work and they serve. The Century Dictionary thus defines 'workman':
>
> "(1). A man who is employed in manual labor, whether skilled or unskilled; a worker; a toiler; specifically an artificer, mechanic or artisan; a handicraftsman. (2). In general, one who works in any department of physical or mental labor; specifically a worker considered with special reference to his manner of or skill in work—that is, workmanship.
>
> "And it defines 'servant' as:

"One who serves or attends, whether voluntarily or involuntarily; a person employed by another and subject to his orders; one who exerts himself or herself, or labors, for the benefit of a master or an employer; an attendant; a subordinate assistant; an agent.'

"The general manager in a sense works, and he works 'in a department of both physical and mental labor.' But this is not the meaning to be given to 'workmen' or 'servants' as used in the Bankruptcy Act, Section 64, Subd. 4."

and also on page 647 of 29 Am. B. R., and page 889 of 200 Fed. Rep.:

"Officers of corporations are in no sense workmen."

In Re Grubbs-Wiley Co. (D. C. Mo.) 2 Am. B. R. 442; 96 Fed. 183;

In Re Carolina Cooperage Co. (D. C. N. C.) 3 Am. B. R. 154, 96 Fed. 950;

This, of course, applies to the general manager and assistant general manager; and their salaries as such could not be entitled to priority.

See also the case of in re Albert O. Brown & Co., 22 Am. B. R. 496, 171 Fed. 281, where priority was denied to the manager in charge of the Chicago branch of a bankrupt New York stock broker's office. In this case the court, at page 497 of 22 Am. B. R., and page 281 of 171 Fed. Rep., said:

"It is quite clear that Olmstead is not a 'workman' for the bankrupt. Nor is he a 'ser-

> vant,' because the term does not include all instances of the formal relation of master and servant . . . In the more limited sense, it is quite clear that Olmstead is not a 'servant.'
>
> "The only thing left that he could be, therefore, is a 'clerk.' No one would think of calling the manager in charge of the Chicago branch of a broker's office a 'clerk'—he himself least of all."

See also the case of in re Greenberger, 30 Am. B. R. 117, 203 Fed. Rep. page 583, where priority was denied to the general manager of a branch store.

See also the case of in re Zotti, 23 Am. B. R. 607, referred to and quoted at length on page 15 of this brief.

III.

Neither Blanchard nor Winn was a "servant" within the meaning of Section 64 b (4).

The bankruptcy act of 1867 provided that priority should not be given except that "wages due from him (the bankrupt) to any operative, or clerk, or house servant" shall be preferred. The present act uses the words: "workman," "clerk," "traveling or city salesman," "servant."

In the case of in re Albert O. Brown & Co., 22 Am. B. R. 496, 171 Fed. Rep. 281, it was held at page 497 of 22 Am. B. R. and page 281 of 171 Fed. Rep.:

"'Workman' is possibly a wider phrase than 'operative,' and 'servant' is undoubtedly wider than 'house servant,' but the section is obviously copied after the law of 1867."

In the following cases the word "servant" as used in the Bankruptcy Act of 1898 is not given a meaning as broad as the common law definition of the word. In them it is held that the words "workman," "clerk" and "servant" are to be given a common every-day popular meaning, and this does not include high-salaried employees of a corporation, such as general managers, superintendents, etc.

In Re Smith, 11 Am. B. R. 646;

Grubbs-Wiley Grocery Co., 2 Am. B. R. 442, 96 Fed. Rep. 183;

In Re Carolina Cooperage Co., 3 Am. B. R. 154, 96 Fed. Rep. 950.

In the case of in re Zotti, 23 Am. B. R. 607, one Setchanow claimed priority for services performed as editor of a newspaper. These services were to take charge of the paper and write all of the reading matter. The owner of the paper, however, was at liberty to give him any orders he pleased, and everything that the editor was to do he was to consult the owner about it, and the owner directed the editor what to do in every particular. The court, at page 608, said:

"This is practically all of the testimony upon which the claimant seeks priority of pay-

ment in this proceeding under the Act (Section 64 b (4)), as for wages due workman, clerk or servant, and the question is: Does this claimant come within that class? He surely was not a workman or one performing manual labor; he was not a clerk, which relates rather to one in a subordinate position in some office, store, etc., and if he is to succeed he must come within the term 'servant.'

Now this term is a very comprehensive one. In a certain sense all public officers are servants. The officers of every corporation are but the servants of the directors, but no one would consider them for that reason entitled to priority. The term 'servant' is popularly applied to those who are employed in household duties or those of a like nature, yet, of course, it is equally used relating to persons under employment in almost every capacity, as suggested above. The true test, in a case such as the one presented here must be found in considering and determining the nature and character of the duties performed by the claimant.

There are many cases in the reports which deal with various named employments, but the position of editor is not among them. The services performed by the editor of the newspaper are necessarily of a much higher class than those performed by other persons employed in the newspaper offices, such as the compositor, or a pressman, or a proofreader. The editor uses

his head, his brains, and necessarily must to some extent use great discretion as to the matter which is to appear in the newspaper.

While undoubtedly the policies of the newspaper are directed by the owner or the manager, yet the editor must have some amount of discretion—in other words, to some extent, at least he is his own master. See *First Natl. Bank* vs. *Barnum,* 20 Am. B. R. 439.

While undoubtedly as between the editor and the manager, the relation of master and servant to some extent exists, it is not that kind of a relation, which I believe the Congress had in mind when it passed the Act allowing priorities to certain classes of individuals."

The analogy between the editor of a newspaper, such as the Setchanow above referred to, and the general manager of a corporation, or the superintendent of its service department, like Blanchard and Winn, is quite patent.

IV.

Neither Blanchard nor Winn became a "workman," "clerk," "salesman" or "servant" because he also performed duties similar to those performed by his subordinates.

The mere fact that Blanchard sold goods does not make him a salesman, nor does the fact that Winn worked with the men make him a workman, within

the meaning of the Bankruptcy Act. Their character should be determined by what they were employed to do. Blanchard was employed as a general manager and not as a salesman, and Winn was employed as superintendent of the service department and not as a workman in that department, and each was to receive his salary accordingly. As was said in the case of in re Crown Point Brush Company, 29 Am. B. R. 638, 200 Fed. Rep. page 882, at page 639 of 29 Am. B. R. and page 883 of 200 Fed. Rep.:

> "Clearly the president and general manager of a corporation is not a clerk, or a traveling or city salesman, even though he may incidentally and occasionally do some clerical work and perform some clerical duties and make some sales. The same may be said of the treasurer and assistant general manager of a corporation, even though the treasurer keeps his own books and makes his own entries. The duties of a 'general manager' and of an 'assistant general manager' are to manage, control, direct, and guide the business; see that it is carried on pursuant to the policies of the corporation and the board of directors. If it should appear that a corporation employs a clerk to do or perform clerical duties at a fixed compensation or salary, and also empowers him to exercise certain powers of direction, supervision or control and management, without added or extra compensation, he would be a clerk, within the meaning

of the law, and his claim for salary would be entitled to priority; but should it employ him as clerk to perform clerical duties and set him to perform the duties of general or assistant general manager, and have the clerical duties performed by others, he would not be a clerk and his wages would not be due to a clerk, but to a general manager, or to an assistant general manager, as the case should be. The law would not tolerate an evasion of that kind . . . On the other hand, should a corporation employ a person to act as, and perform the duties of a general manager, or assistant general manager at a fixed salary, and finding such services unnecessary set him to perform the duties of clerk, floor sweeper, or furnace tender, he would be, in fact, either a workman or a servant, within the meaning of the law, and his claim for salary so earned would be entitled to priority. He would have the right to accept the inferior employment and perform its duties, but should he voluntarily, while holding the position of assistant general manager perform manual labor assigned as part of his duties, he would not become a workman or servant and entitled to priority. *His character would be determined by what he was employed to do* . . . The treasurer of a corporation is supposed to keep books; and it is his duty to do so. A corporation may employ a clerk, or clerks, to assist and do the mere cleri-

cal work, but if it does not, and the treasurer himself makes the entries, keeps the books and does the necessary clerical work, he does not cease to be treasurer and become a workman or a clerk, or a servant, within the meaning of the bankruptcy law. . . . While in a sense each claimant here was an 'employee' of the bankrupt corporation, neither was an 'employee' within the further definition of the state, as neither was a mechanic, workman, or laborer, as those words are commonly understood. One was the president and general manager and the other the treasurer and assistant general manager, and each had a salary as manager and assistant manager respectively. Both, prior to bankruptcy, would have repudiated the idea that they were either workmen or laborers in the employment of the corporation, and as such, subject to their own order and direction as general manager and assistant general manager respectively, in which capacity, and that alone, they were employed and to be paid by the corporation."

Blanchard corresponds to the general manager referred to in the above case and Winn to the treasurer and assistant general manager, and the analogy between the parties is too plain to require comment.

In the case of in re Greenberger, 30 Am. B. R. 117, 203 Fed. Rep. 583, the court, at page 118 of 30 Am. B. R. and page 584 of 203 Fed. Rep. said:

> "Cohen was neither a workman, clerk, traveling or city salesman, or servant. The fact that as incident to the performance of his duties as general manager of this store, he kept it clean and did some clerical duties does not change the character of his employment. He was not employed to do that work, but to manage the business, and he was paid for managing it, and not for performing such menial services as he did perform as incident to the management. The claim is for salary and for salary as manager, not for services as a clerk and general workman and compensation as such.
>
> The referee was right in holding that the claim of Cohen could not be allowed as one entitled to priority. It would hardly do to hold that the general manager of the business of a corporation, or individual, employed and paid as such, becomes entitled to priority, for the reason he incidentally sweeps the floor, dusts the counters, and assists in selling goods. Adopt this rule and general managers of a business would be sure to do enough menial work to bring themselves within the section of the bankruptcy act giving priority to workmen, clerks, salesman and servant."

V.

It is immaterial that neither Blanchard nor Winn was a stockholder or director of the bankrupt corporation.

It is apparent from the referee's certificate on review that the strongest consideration moving him to allow these claims as priority was the fact that neither Blanchard nor Winn were stockholders or directors of the bankrupt corporation. In other words, he favored them because they were in no measure responsible for the policies of the bankrupt or for the contraction of its debts and were subject at all times to the control of the board of directors of the corporation. While it is true that it appears in some of the cases that we have relied upon that the claimant was also a stockholder or director of the bankrupt corporation, still in none of these cases does it appear that priority was denied because the claimant was a stockholder or director, and in all of the cases it appears that priority was denied to general managers, superintendents and the like, even though they were subject to the control of a higher power, such as a board of directors, and they had no voice in the policies of the bankrupt.

As was said in the case of in re Crown Point Brush Co., 29 Am. B. R. 638, 200 Fed. Rep. page 882, at page 639 of 29 Am. B. R. and page 883 of 200 Fed. Rep.

> "The duties of a 'general manager' and of an 'assistant general manager' are to manage, control, direct, guide the business; *see that it is carried on pursuant to the policies of the board of directors,*"

and in that case priority was denied to a general manager and an assistant general manager.

See also the case of in re Zotti, 23 Am. B. R. 607, referred to and quoted at length on page 15 of this brief.

VI.

The laws of the State of California giving priority to wages due workmen, clerks, servants, salesmen and "other persons" cannot avail Blanchard or Winn.

Section 1204 of the Code of Civil Procedure of the State of California provides:

> "*Preferred Creditors When Assignment of Property Is Made.* When an assignment, whether voluntary or involuntary, is made for the benefit of the creditors of the assignor, or results from any proceeding in insolvency commenced against him, the wages and salary of miners, mechanics, salesmen, servants, clerks, laborers, and other persons for services rendered for him within sixty days prior to such assignment, or to the commencement of such proceeding, and not exceeding $100 each, con-

> stitute preferred claims, and must be paid by the trustee or assignee before the claim of any other creditor of the assignor or insolvent."

Section 64 b (5) of the Bankruptcy Act provides:

> "The debts to have priority . . . . and to be paid in full out of the bankrupt's estate, and the order of payment shall be . . . . debts owing to any person who by the laws of the States or the United States is entitled to priority."

Blanchard and Winn contended at the hearing before the District Judge that, even though they did not come within Section 64 b (4) of the Bankruptcy Act, they were entitled to the benefits of the said section of the Code of Civil Procedure of the State of California because of the wording of the said Section 64 b (5) of the Bankruptcy Act.

This contention is not a new one and has been raised many times before but decided adversely. The great weight of authority is to the effect that Section 64 b (5) does not enlarge Section 64 b (4), and that where the two sections come in conflict Section 64 b (4) controls. In other words, workmen, clerks, and servants obtain only such priority as is definitely fixed by Section 64 b (4), and, if they do not come within its provision, they cannot take refuge in Section 64 b (5).

In the case of in re Riehl, 29 Am. B. R. 613, 200 Fed. 455, the court said at page 615 of 29 Am. B. R., and page 456 of 200 Fed. Rep.:

> "Section 64, paragraph 5, clause 5, of the Bankruptcy Act, gives precedence over claims of general creditors to debts owing to any person who by the laws of the States or the United States, is entitled to priority. Ordinarily a court of bankruptcy will recognize and enforce such priority as may be given by the State law. The exceptions are those cases in which the bankruptcy act itself fixes the nature and extent of the preference to which a particular creditor or a particular class of creditors shall be entitled. For example, it says that the wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of proceedings, not to exceed $300 to each claimant, shall be preferred, and that partnership property shall be first applied to partnership debts and individual property to individual debts. When Congress has thus spoken, its will prevails over all State statutes."

In the case of in re Jacob Slomka, referred to in in re Riehl, the court said at page 637 of 9 Am. B. R., and page 631 of 122 Fed. Rep.:

> "If by the State law the debts were within the general description of clause 5, we are of opinion that the clause would not apply and

that the terms of clause 4 supply the exclusive rule for determining what debts for wages are entitled to priority. No principle of statutory construction is better settled than that which displaces the application of general provisions to a particular subject when there are specific provisions applicable to it in the same act. The subject of claims for wages is specifically regulated by clause 4, and its provisions express the particular intent of Congress regarding priority of such claims. As these confine the priority to wages earned within the three months before the commencement of the bankruptcy proceedings, debts like the present are not included. We agree upon this question with the decision of the Circuit Court of Appeals for the Seventh Circuit, in re Rouse, Hazard & Co., 1 Am. B. R. 234, 91 Fed. Rep. 96, and for the reasons which are so satisfactorily stated in the opinion in that case. We have given due consideration to the decision by the Circuit Court of Appeals for the Sixth Circuit, in re Laird, 6 Am. B. R. 1, 109 Fed. Rep. 550, but we are unable to regard it as correct."

In the case of in re Rouse, Hazard & Co., 1 Am. B. R. 234, 91 Fed. 96, the court, at page 240 of 1 Am. B. R. and page 99 of 91 Fed. Rep. said:

"The question here is one of construction of the Bankrupt Law of the United States, and

is this: Whether Congress, having spoken by a particular provision—Sec. 64 b (4)—with respect to the priority to be allowed labor claimants, and having subsequently in the act—Sec. 64 b (5)—spoken generally with respect to recognition of the priorities allowed by the laws of the State, or the United States, the latter general provision overrides or enlarges the prior special provision.

"The Bankrupt Act by its terms went into full force and effect upon its passage July 1, 1898, and notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, the Bankrupt Law was operative from the date of its passage, and was effective from that date to supersede the insolvency laws of the several States. *Parmenter Manufacturing Company* vs. *Hamilton,* 51 N. E. Rep. 529; *Blake Moffitt & Towne* vs. *Francis-Valentine Company,* 89 Fed. R. 691; In re Bruss-Ritter Company, Eastern District of Wisconsin, 90 Fed. R. 651. It is probably true that Congress could constitutionally in the Bankrupt Act recognize the varying systems of the several States with respect to exemptions and with respect to priority of payment of debts. *Darling* vs. *Berry,* 4 McCrary, 407. So that the question recurs, what was the real intention of the Con-

gress as expressed in Subd. 4 and 5 of Sec. 64 b? In the first subdivision Congress addresses itself to the subject of labor claims, and particularly provides that all wages that have been earned within three months before the date of the commencement of proceedings in bankruptcy, not to exceed $300 to each claimant, shall be awarded priority of payment. It recognized, it must be assumed, the various provisions of law in the several States with respect to the subject. It found them not to be in harmony, and in some States, as notably Illinois, the laws upon that subject not to be consistent with each other. It found limitation as to time different in the different States. It found that in some of the States priority of payment was unlimited as to amount, and in some of the States limited to so small a sum as $50. With this divergence within its knowledge, the Congress spoke to the subject specially and particularly, and limited the amount to $300, and, as to time, to wages earned within three months before the commencement of proceedings. Can, then, the subsequent provision of the law following immediately thereafter allowing priority of payment for all debts owing to any person who, by the laws of the States or the United States, is entitled to priority, be held to enlarge the prior provision so that the statute should be read that in any event the laborer should be entitled to priority

of payment in respect of wages earned within three months prior to proceedings and in amount not exceeding $300, and that wherever the laws of the State of the residence of the bankrupt grant the laborer priority of payment without limit as to time or amount, or imposes a limit in excess of that imposed by the Bankrupt Act, he shall be entitled to a further priority in payment according to the law of the particular State? We think not. It is not to be supposed—unless the language of the act clearly so speaks—that the Congress intended that in the administration of the act there should be a marked contrariety in the priority of payment of labor claims dependent upon locality. It is an elementary principle of construction that where there are in one act, or in several acts contemporaneously passed, specific provisions relating to a particular subject, they will govern in respect to that subject as against general provisions contained in the same act. Sutherland on Statutory Construction, Sec. 158."

Conclusion

In conclusion we respectfully submit that we have established the following propositions:

(1) Neither Blanchard nor Winn is entitled to priority of payment under Section 64b (4) of the Bankruptcy Act because their compensation exceeded $1500.00 per year, the limit fixed by Section 1, Subd. 27 of the Bankruptcy Act;

(2) The great weight of authority is to the effect that neither the general manager of a corporation, such as Blanchard, nor the superintendent of its service department, such as Winn, is entitled to priority of payment under Section 64b (4);

(3) The laws of the State of California cannot avail Blanchard or Winn in obtaining priority of payment.

We urge that the order of the District Court should be reversed, with costs to the petitioner and against the respondents.

Dated, San Francisco, February....., 1915.

Respectfully submitted,

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